

NTSB Order No. EA-4899

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 12th day of June, 2001

Respondent .

Docket SE-16073

Respondent, pro se, has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, rendered at the conclusion of an evidentiary hearing held on January 30, 2001.¹ By that decision, the law judge affirmed

Respondent filed a one-page notice of appeal that the Administrator considered to be the appeal brief for purposes of complying with the Board Rule of Practice found at 49

an emergency order suspending respondent's airman certificate with commercial pilot privileges pending a successful reexamination of her qualifications to hold a certificate, pursuant to 49 U.S.C. section 44709.² As discussed below, the appeal is denied.

In an Emergency Order of Suspension, issued September 5, 2000, the Administrator alleged:

1. At all times pertinent herein, you were the holder of Airman Certificate No. 1696874 with Commercial Pilot Privileges.
2. On April 28, 2000, at approximately 11:30 hours (MDT) you were pilot in command of an RV-4 aircraft, Registration Number N724CF, on a flight that ended in an accident, at Los Alamos Airport, Los Alamos, New Mexico.
3. During the landing phase of the flight described in Paragraph 2 above, you lost directional control of the aircraft and it left the runway. After the aircraft had left the runway, you applied full power and attempted to go-around.
4. After an investigation of the accident described above, you were informed by Certified Mail Return Receipt Requested, mailed on May 9, 2000, that re-examination of

(..continued)

C.F.R. section 821.48. The Administrator filed a reply brief and respondent filed a letter (dated April 6, 2001, and received April 13, 2001) seeking to respond to the Administrator's reply. Such filings are permitted only in very specific circumstances, none of which is present here. See 49 C.F.R. § 821.48(e). As a result, we have disregarded this letter.

²Respondent waived expedited handling of her appeal from the emergency order.

Section 44709(a), 49 U.S.C., grants the Administrator authority to reexamine, "at any time," those who hold airman certificates.

your airman competency was necessary under Title 49 U.S.C. Section 44709(a).

5. As of July 28, 2000, you had been given ample opportunity to make satisfactory arrangements for the re-examination requested in the FAA's letter to you of May 9, 2000.
6. To date, you have failed to submit to a re-examination of your qualifications so as to demonstrate that you are qualified to hold an Airman Certificate with Commercial Pilot Privileges.

As we have often said, the Administrator need only show that a reasonable basis for the reexamination request exists. The Board's review of the Administrator's decision is then extremely limited:

Our precedent establishes that a Board determination as to the reasonableness of a re-examination request entails an exceptionally narrow inquiry. We do not attempt to secondguess the Administrator as to the actual necessity for another check of a certificate holder's competence. Rather, in a typical case, we look only to see whether the certificate holder has been involved in a matter, such as an aircraft accident or incident, in which a lack of competence could have been a factor and, if he was, we uphold the re-examination request as reasonable, without regard to the likelihood that a lack of competence had actually played a role in the event. See, e.g., Administrator v. Wang, NTSB Order EA-3264 (1991). In sum, the Administrator in such cases need only convince us that a basis for questioning competence has been implicated, not that a lack of competence has been demonstrated.

Administrator v. Santos and Rodriguez, NTSB Order No. EA-4266 at 3-4 (1994). See also Administrator v. Maitland, NTSB Order No. EA-4878 at 4 (2001); Administrator v. Hiraoka, NTSB Order No. EA-4486 at 4 (1996).

To put it in very plain terms, respondent was pilot-in-command of an aircraft that was involved in an accident. The Administrator put forth enough evidence to show that lack of competence *could* have been a factor in the accident,³ and acted within her authority to seek a reexamination of respondent's qualifications to hold an airman certificate with commercial pilot privileges. After hearing the relevant evidence, the law judge determined that the Administrator had a reasonable basis for issuing the suspension order. Respondent has identified no valid reason to disturb the law judge's decision.⁴

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The initial decision and the emergency suspension order are affirmed.

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

³See testimony of FAA aviation safety inspector, transcript pages 19-28.

⁴Respondent argues on appeal that: she was not advised of the suspected regulatory violations; she and the law judge "had a personal confrontation on the telephone the day prior to the hearing"; and the law judge made his decision prior to the hearing. She further questioned the motives of the FAA inspector and chief witness. Respondent produced no evidence at hearing or on appeal to substantiate any allegations that would have an affect on the outcome of her appeal and, thus, her arguments are unavailing.